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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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EXAMINER	
HIDE	
ART. UNIT	PAPER NUMBER
	4

DATE MAILED: 03/02/88

This is a communication from the examiner in charge of your application.

COMMISSIONER OF PATENTS AND TRADEMARKS

03/02/88

☒ This application has been examined ☐ Responsive to communication filed on \_\_\_\_\_ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire THREE month(s) \_\_\_\_\_ days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- ☒ Notice of References Cited by Examiner, PTO-892.
- ☐ Notice re Patent Drawing, PTO-948.
- ☐ Notice of Art Cited by Applicant, PTO-1449
- ☐ Notice of Informal Patent Application, Form PTO-152
- ☐ Information on How to Effect Drawing Changes, PTO-1474
- ☐ \_\_\_\_\_

Part II SUMMARY OF ACTION

- ☒ Claims 1 TO 7 are pending in the application.  
Of the above, claims \_\_\_\_\_ are withdrawn from consideration.
- ☐ Claims \_\_\_\_\_ have been cancelled.
- ☐ Claims \_\_\_\_\_ are allowed.
- ☒ Claims 1 TO 7 are rejected.
- ☐ Claims \_\_\_\_\_ are objected to.
- ☒ Claims 1 TO 7 are subject to restriction or election requirement.
- ☐ This application has been filed with informal drawings which are acceptable for examination purposes until such time as allowable subject matter is indicated.
- ☐ Allowable subject matter having been indicated, formal drawings are required in response to this Office action.
- ☐ The corrected or substitute drawings have been received on \_\_\_\_\_. These drawings are ☐ acceptable; ☐ not acceptable (see explanation).
- ☐ The ☐ proposed drawing correction and/or the ☐ proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_ has (have) been ☐ approved by the examiner. ☐ disapproved by the examiner (see explanation).
- ☐ The proposed drawing correction, filed \_\_\_\_\_, has been ☐ approved. ☐ disapproved (see explanation). However, the Patent and Trademark Office no longer makes drawing changes. It is now applicant's responsibility to ensure that the drawings are corrected. Corrections MUST be effected in accordance with the instructions set forth on the attached letter "INFORMATION ON HOW TO EFFECT DRAWING CHANGES", PTO-1474.
- ☒ Acknowledgment is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☒ been received ☐ not been received  
☐ been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_
- ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
- ☐ Other

Art Unit 123

Receipt is acknowledged of the preliminary amendment filed January 28, 1987, which has been entered in the file.

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

A new and more definitive Abstract still limited to 250 words or less is required.

Claims 2 to 7 are rejected under 35 U.S.C. 112, first and second paragraphs, as the claimed invention is not described in such full, clear, concise and exact terms as to enable any person skilled in the art to make and use the same, and/or for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The expressions "A therapeutic composition" "comprising", "a pharmaceutically effective amount", "in association with", "a physiologically acceptable excipient", "an <sup>arousing</sup> agent", which <sup>arises</sup> comprises "a CNS stimulant", "est<sup>e</sup>rification", and "subjecting" render the claims indefinite and based on an inadequate or insufficient disclosure by placing no definite limits or boundaries on the claims, by being so broad as to read on subject matter as to which the disclosure is not

enabling, and by being inadequately or insufficiently described in the written description of the specification.

Claims 1 and 2 are rejected under 35 U.S.C. 103 as being unpatentable over Lafon I or II, cited.

The references disclose the racemate of the claimed ~~laevo-~~<sup>u</sup>rotary compound, therapeutic compositions thereof and useful in treatment<sup>of</sup> awakening disorders and of confusion especially in the elderly. The claimed optical ~~isomer~~<sup>m</sup> would be obvious from the racemate containing it in the absence of any unobvious properties. It would be quite obvious to use the particular optical isomer which ~~hold~~<sup>ad</sup> the greater activity.

Although an action has been given on the merits of all of the claims in order to expedite, it is noted that this application is derected to two independent and distinct inventions.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1 to 4, drawn to compound, composition and method of use, classified in Class 564, subclass 162.

II. Claims 5 to 7, drawn to method of preparing a compound, classified in Class 564, subclasses 133 and 139.

The inventions are distinct, each from the other, because of the following reasons:

Art Unit 123

Inventions I and II are related as process of making and product made.

The inventions are distinct if either (1) the process as claimed can be used to make another and materially different product, or (2) the product as claimed can be made by another and materially different process. MPEP 806.05(f).

In this case, the product as claimed can be made by a materially different process such as that shown in the abstract of Lafon II.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their separate classifications and recognized divergent subject matter and the search required for Group II is not required for Group I restriction for examination purposes as indicated is proper.

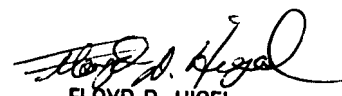
Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement may be traversed.

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Floyd D. Higel whose telephone number is (703) 557-1211.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 557-3920.

2-29-88;df

  
FLOYD D. HIGEL  
PATENT PRIMARY EXAMINER  
ART UNIT 123